

141.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
HAWAII ELECTRIC LIGHT COMPANY, INC.)
For Approval of Rate Increases and)
Revised Rate Schedules.)
_____)

DOCKET NO. 05-0315

ORDER NO. 23586

Filed August 8, 2007
At 11 o'clock A.M.

Harun Higele.
Chief Clerk of the Commission

OF THE STATE OF HAWAII

In the Matter of the Application of)
HAWAII ELECTRIC LIGHT COMPANY, INC.)
For Approval of Rate Increases and)
Revised Rate Schedules.)

Docket No. 05-0315

Order No. 23586

ORDER

By this Order, the commission declines to adopt, at this time, the federal time-based metering and communications standards set forth in Section 111(d)(14) of the Public Utility Regulatory Policies Act of 1978 ("PURPA"), as amended by the Energy Policy Act of 2005 ("EPACT")¹ for HAWAII ELECTRIC LIGHT COMPANY, INC. ("HELCO").² As discussed further below, the

¹By Order No. 23562, filed on July 27, 2007, in Docket No. 2006-0497, and Order No. 23563, filed on July 27, 2007, in Docket No. 2006-0498, the commission also declined to adopt the federal interconnection standards set forth in Section 111(d)(15) of PURPA, as amended by the EPACT, for Hawaiian Electric Company, Inc. ("HECO"), HELCO, Maui Electric Company, Ltd. ("MECO") and Kauai Island Utility Cooperative.

²HELCO, a wholly owned subsidiary of HECO, is a corporation duly organized under the laws of the Republic of Hawaii on or about December 5, 1894. HELCO is an operating utility engaged in the production, purchase, transmission, distribution and sale of electricity on the island of Hawaii.

The Parties to this docket are HELCO and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a). Keahole Defense Coalition, Inc. ("KDC") is a participant in this proceeding, pursuant to Order No. 22663, filed on August 1, 2006.

commission agrees with HELCO and the Consumer Advocate that HELCO's current and proposed time-of-use rates are generally consistent with the PURPA standards, and that the adoption of one size fits all standards may have unintended consequences especially for a small utility, such as HELCO, with a relatively small service territory, overall load profile, and limited historical experience with time-of-use rates.

I.

Background

Sections 111(d)(14)(A) and 112(b)(4)(B) of PURPA, as amended by the EPACT, require the commission to: (1) commence consideration of the PURPA time-based metering and communications standards not later than August 8, 2006; and (2) complete its consideration of these standards not later than August 8, 2007.³

By letter dated August 8, 2006, the commission directed the Parties and Participants to provide a statement describing their position, if any, on whether the commission should adopt, modify, or decline to adopt in whole or part, the standards articulated in Sections 111(d)(4) and 112(b)(4) of PURPA, as amended by EPACT, as well as procedural comments and suggestions as to how this issue should be considered in this docket or in a separate proceeding.

Rocky Mountain Institute ("RMI") was initially a participant in this proceeding. By Order No. 23108, filed on December 5, 2006, the commission approved RMI's withdrawal as a participant in this proceeding.

³16 U.S.C. §§ 2621(d)(14)(A) and 2622(b)(4)(B).

A.

HELCO's Position

By letter dated September 15, 2006, HELCO filed its comments on the PURPA federal time-based metering and communications standards ("HELCO Letter") in which it recommended that the commission decline to adopt the PURPA time-based metering and communications standards. In the HELCO Letter, HELCO represents that its current tariff includes a number of time-of-use offerings and credits for peak load reduction; and that it is proposing a number of new time-of-use pricing options for its customers in this rate proceeding. HELCO asserts that its time-of-use tariffs are appropriate, given factors such as (1) the relatively small size and number of customers in the HELCO service territory relative to mainland utilities, (2) HELCO's overall load profile and the load profiles of its major customer classes, and (3) HELCO's historical experience with time-of-use tariffs. HELCO considers the proposed availability of a time-of-use rate option to all customer classes to be a positive step toward increasing customer choice to manage electric bills, in that the time-of-use rate options identify demand and energy charges by usage period, and are designed with the intent that customers can achieve bill savings by modifying their energy consumption. HELCO recommends that the commission consider HELCO's current and proposed time-of-use tariffs to be consistent with the federal time-based metering and communications standards and find that that there is no need to address the standards either in this or a separate proceeding.

Additionally, HELCO discusses the PURPA federal standards in its Opening Brief in this docket.⁴ HELCO reiterates that it would be unnecessary to impose additional time-based metering and communications federal standards upon it because once HELCO's proposed rate design is approved in a final determination by the commission HELCO will comply with the standard regarding the offering of time-based rates. According to HELCO, it is proposing a time-of-use rate schedule for each of its customer classes (except for Schedule F - Street Light Service customers), and will manage participation by setting a limit on the number of meters that can participate in each optional rate schedule.⁵ In addition, HELCO's affiliate, HECO, is currently investigating advanced metering and telecommunications infrastructure solutions that will enhance the ability of the consumer to manage its energy use and cost.

HELCO adds that adoption of the federal standard could have unintended consequences; for example, according to HELCO the standard could be construed to require that street light customers be offered a time-of-use option, or that there be no initial limit on the number of meters that can initially participate.⁶ HELCO asserts in its Opening Brief that "one size

⁴Opening Brief of [HELCO] and Certificate of Service, filed June 4, 2007 in this docket.

⁵According to HELCO, the meter limit facilitates effective implementation of the rate options since the current billing system cannot bill time-of-use rates automatically, and HELCO may not have a new Customer Information System in place before the proposed rates are approved.

⁶HELCO's Opening Brief at 194.

fits all federal standards are not the optimal method to achieve objectives such as equitable rates for electricity consumers."⁷ For example, with regard to critical peak pricing and real-time pricing rate levels, HELCO understands that on the mainland, these are based, in part, on market prices for electricity. Because HELCO lacks access to a wholesale market, i.e., HELCO operates a stand alone system on the island of Hawaii, a pricing signal to drive critical peak pricing and real-time pricing is not available to it, making it unclear at what levels HELCO's critical peak pricing or real-time pricing rates would be set.

In addition, HELCO has proposed time-of-use rates for its customer classes in the instant rate proceeding and believes that it would be prudent to evaluate its customers' response to these rates before offering rates that are more complicated for customers to understand. HELCO acknowledges that each type of time-based rate is different and may not work the same for all consumer sectors. According to HELCO, "[m]ost of the benefits of time-based rates will be realized only if consumers respond to price signals and can and do change their consumption patterns."⁸ Therefore, HELCO is not proposing critical peak and real-time pricing at this time.

Finally, according to HELCO, PURPA did not take primary responsibility over electric utility rates from state regulatory bodies, rather, under PURPA and its amendments, states retain

⁷Id.

⁸Id. at 193.

primary responsibility with respect to retail electric rates; PURPA is intended to supplement, not override state law.⁹

B.

Consumer Advocate's Position

By letter dated and filed with the commission on August 3, 2007, the Consumer Advocate confirmed that it agrees with HELCO's recommendation that the commission decline to adopt the EPACT standards ("Consumer Advocate Letter"). The Consumer Advocate states that as part of its review of this proceeding, it reviewed HELCO's proposed time-of-use rates. The Consumer Advocate notes that its witness, Michael L. Brosch, offered written testimony in this proceeding: (1) recommending approval of the proposed time-of-use rates; (2) noting that these rates were intended to provide customers the opportunity to lower their energy costs by shifting their usage, from peak periods to off-peak periods; and (3) stating that the proposed usage periods and rate discount/premium ranges were reasonable in relation to the marginal costs and existing HELCO load management Rider tariffs.¹⁰ The Consumer Advocate concludes that based upon its consideration of HELCO's proposed time-of-use rates, and its recommendation in this proceeding that the commission approve HELCO's proposed time-of-use rates, the commission should deem HELCO's proposed time-of-use rates to be consistent with the PURPA standards, as amended by EPACT, and determine that the

⁹Id. at 195.

¹⁰Consumer Advocate Letter at 2.

proposed time-of-use-rates do not warrant separate consideration in this or a separate proceeding.

II.

Discussion

Sections 111 and 112 of PURPA, as amended by the EPACT, as codified in Sections 2621 and 2622 of Title 16 of the United States Code state in relevant part:

§ 2621. Consideration and determination respecting certain ratemaking standards

(a) Consideration and determination

Each state regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility shall consider each standard established by subsection (d) of this section and make a determination concerning whether or not it is appropriate to implement such standard to carry out the purposes of this chapter. For purposes of such consideration and determination in accordance with subsections (b) and (c) of this section, and for purposes of any review of such consideration and determination in any court in accordance with section 2633 of this title, the purposes of this chapter supplement otherwise applicable State law. Nothing in this subsection prohibits any State regulatory authority or nonregulated electric utility from making any determination that it is not appropriate to implement any such standard, pursuant to its authority under otherwise applicable State law.

(b) Procedural requirements for consideration and determination

(1) The consideration referred to in subsection (a) of this section shall be made after public notice and hearing. The determination referred to in subsection (a) of this section shall be -

(A) in writing,

(B) based upon findings included in such determination and upon the evidence presented at the hearing, and

(C) available to the public.

(2) Except as otherwise provided in paragraph (1), in the second sentence of section 2622(a) of this title, and in sections 2631 and 2632 of this title, the procedures for the consideration and determination referred to in subsection (a) of this section shall be those established by the State regulatory authority or the nonregulated electric utility.

(c) Implementation

(1) The State regulatory authority (with respect to each electric utility for which it has ratemaking authority) or nonregulated electric utility may, to the extent consistent with otherwise applicable State law -

(A) implement any such standard determined under subsection (a) of this section to be appropriate to carry out the purposes of this chapter, or

(B) decline to implement any such standard.

(2) If a State regulatory authority (with respect to each electric utility for which it has ratemaking authority) or nonregulated electric utility declines to implement any standard established by subsection (d) of this section which is determined under subsection (a) of this section to be appropriate to carry out the purposes of this chapter, such authority or nonregulated electric utility shall state in writing the reasons therefor. Such statement of reasons shall be available to the public.

(d) Establishment

(14) Time-based metering and communications

(A) . . . [E]ach electric utility shall offer each of its customer classes, and provide individual customers upon customer request, a time-based rate schedule under which the rate charged by the

electric utility varies during different time periods and reflects the variance, if any, in the utility's costs of generating and purchasing electricity at the wholesale level. The time-based rate schedule shall enable the electric consumer to manage energy use and cost through advanced metering and communications technology.

(B) The types of time-based rate schedules that may be offered under the schedule . . . include, among others—

(i) time-of-use pricing whereby electricity prices are set for a specific time period on an advance or forward basis, typically not changing more often than twice a year, based on the utility's cost of generating and/or purchasing such electricity at the wholesale level for the benefit of the consumer. Prices paid for energy consumed during these periods shall be pre-established and known to consumers in advance of such consumption, allowing them to vary their demand and usage in response to such prices and manage their energy costs by shifting usage to a lower cost period or reducing their consumption overall;

(ii) critical peak pricing whereby time-of-use prices are in effect except for certain peak days, when prices may reflect the costs of generating and/or purchasing electricity at the wholesale level and when consumers may receive additional discounts for reducing peak period energy consumption;

(iii) real-time pricing whereby electricity prices are set for a specific time period on an advanced or forward basis, reflecting the utility's cost of generating and/or purchasing electricity at the wholesale level, and may change as often as hourly; and

(iv) credits for consumers with large loads who enter into pre-established peak load reduction agreements that reduce a utility's planned capacity obligations.

(C) Each electric utility . . . shall provide each customer requesting a time-based rate with a time-based meter capable of enabling the utility and customer to offer and receive such rate, respectively.

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§ 2622. Obligations to consider and determine

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(b) Time limitations

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(4)(A) Not later than 1 year after August 8, 2005, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility shall commence the consideration referred to in section 2621 of this title, or set a hearing date for such consideration, with respect to the standard established by paragraph (14) of section 2621(d) of this title.

(B) Not later than 2 years after August 8, 2005, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority), and each nonregulated electric utility, shall complete the consideration, and shall make the determination, referred to in section 2621 of this title with respect to the standard established by paragraph (14) of section 2621(d) of this title.

16 U.S.C. §§ 2621 and 2622 (boldface in original) (emphasis added).

Here, given that HELCO's tariff includes a number of time-of-use pricing options, HELCO's relatively small service territory, overall load profile and the load profiles of its major customer classes, and its limited historical experience with time-of-use rates, the commission agrees that it is inappropriate for the commission to adopt, and impose upon HELCO, the PURPA time-based metering standards at this time. Most of HELCO's customer classes, as well as its individual customers, currently have the opportunity to avail themselves of

a variety of time-based rate schedules. And as noted above, critical peak pricing and real-time pricing may not work the same for all consumer groups, and thus it may be more prudent, at this time, for HELCO to evaluate its customers' responses to the proposed time-of-use rates before offering more complicated critical peak and real-time pricing options to its customers.

Based on the foregoing reasons, the commission accepts HELCO and the Consumer Advocate's recommendation, and declines to adopt, at this time, the PURPA time-based metering and communications standards for HELCO.¹¹ As discussed above, the commission agrees with HELCO and the Consumer Advocate that HELCO's current and proposed time-of-use rates are generally consistent with the PURPA standards, and that the adoption of one size fits all standards may have unintended consequences especially for a small utility, such as HELCO.

III.

Order

THE COMMISSION DECLINES to adopt, at this time, the federal time-based metering and communications standards set

¹¹The commission's action of declining to adopt a PURPA standard is not without precedent. See, e.g., In re Public Util. Comm'n, Docket No. 94-0203, Decision and Order No. 14454, filed on January 12, 1996 (the commission declined to adopt any of the standards set forth in section 111 of PURPA, as amended by the Energy Policy Act of 1992, finding that the IRP Framework already incorporated the energy efficiency standards set forth in section 111 of PURPA, as amended); and In re Public Util. Comm'n, Docket No. 94-0204, Decision and Order No. 13632, filed on November 2, 1994 (the commission declined to adopt the gas efficiency standards set forth in section 303(b) of PURPA, as established by section 115 of the Energy Policy Act of 1992, finding that the IRP Framework already incorporated the new federal gas standards).

forth in Section 111(d)(14) of PURPA, as amended by the EPACT,
for HELCO.

DONE at Honolulu, Hawaii AUG - 8 2007.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By: Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By: John E. Cole
John E. Cole, Commissioner

By: Leslie H. Kondo
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

Benedyne Stone
Benedyne Stone
Commission Counsel

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23586 upon the following persons, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such person.

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Certificate of Service
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Karen Higashi

DATED: AUG - 8 2007